

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D. C. 20548

60326

FILE: B-185126

DATE: December 23, 1975

MATTER OF: Twyco, Inc.--Request for reconsideration

99296

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DIGEST:

1. Upon request for reconsideration, prior decision holding protest untimely is affirmed since protester does not advance any additional facts or legal arguments which show that earlier decision was erroneous.
2. While it may be true that procuring activity did not inform protester of protest procedures, Bid Protest Procedures have been published in Federal Register and protester is on constructive notice of contents.

Twyco, Inc. (Twyco), requests reconsideration of our decision B-185126, November 19, 1975, which involved its protest under invitation for bids (IFB) No. DSA700-75-B-2428, issued by the Defense Supply Agency (DSA), Defense Construction Supply Center (DCSC), Columbus, Ohio. Twyco contended in its initial protest that DSA improperly waived first article testing for Valad Electric Manufacturing Company and improperly failed to waive such requirement for it.

We held that since Twyco did not protest within 10 working days after initial adverse agency action, the protest was untimely under section 20.2(a) of our Bid Protest Procedures, 40 Fed. Reg. 17979 (1975). We concluded that while it was not clear when Twyco first received notice of its denial from DSA, it was apparent that the protester knew by September 24, 1975, since in a letter of the same date to DCSC, Twyco refers to DSA's letter of August 26, 1975, denying its protest. Twyco's protest was received in our Office on October 14, 1975, more than 10 working days after notification of initial adverse agency action.

Twyco now contends that it responded to DSA within the required time period and that it did not appeal to our Office until it received a final denial of its protest on October 3, 1975. The protester also argues that it was never advised as to appeal procedures.

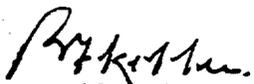
As stated in our prior decision, the Bid Protest Procedures provide that where a protest has initially been filed with the agency,

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the protest to our Office must be filed within 10 working days after receipt of initial adverse agency action. DSA's letter of August 26, 1975, clearly should have been considered as the initial adverse agency action since it denied Twyco's protest. It was incumbent upon the protester to file a protest within 10 days after receipt of that initial adverse agency action.

Twyco also contends that it was not advised of our Bid Protest Procedures. While this may be true, the Bid Protest Procedures have been published in the Federal Register, at 40 Fed. Reg. 17979 (1975) and, therefore, Twyco was on constructive notice of its contents. International Brotherhood of Electrical Workers, B-183271, April 3, 1975, 75-1 CPD 201.

Since the protester has not advanced any additional facts or legal arguments which show that our earlier decision was erroneous, our decision of November 19 is affirmed.


Deputy Comptroller General
of the United States